

State of California
Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

**ADOPTION OF REGULATIONS
ON AN EMERGENCY BASIS PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTION 11346.1(b)**

CDI File No. ER01013139

June 5, 2002

A. Regulation Text

Text of the emergency regulations is attached.

B. Agency Express Finding of Emergency

California Insurance Commissioner Harry W. Low (“Commissioner”) hereby adopts on an emergency basis Title 10, Chapter 5, Subchapter 1, Article 10, Sections 2193 through 2193.3, California Code of Regulations (CCR), regarding activities exempt from insurance agent/broker licensure. The Commissioner is taking this action because, pursuant to Government Code Section 11346.1 (b) and Section 8 of AB 393 (Chapter 321, Statutes of 2000), the adoption of these regulations on an emergency basis is necessary for the immediate preservation of the public peace, health, safety and general welfare of the people of the State of California.

C. Agency statement of specific facts showing the need for immediate action

Assembly Bill 393, Chapter 321, Statutes of 2000, amended the regulatory scheme for insurance agents/brokers. Under Insurance Code Sections 1631 and 1635, as amended by AB 393, persons cannot solicit, negotiate, or effect contracts of insurance unless licensed by the Commissioner to act in such capacities. Insurance Code Section 1635 provides certain exemptions from licensure.

Assembly Bill 393, Section 8, requires the Commissioner to adopt regulations on an emergency basis to implement Insurance Code Sections 1631 and 1635. The proposed emergency regulations are intended to comply with the statutory requirement of adoption on an emergency basis.

D. Authority and Reference citations

The Insurance Commissioner proposes the adoption of these regulations pursuant to the authority provided in Section 8 of AB 393, Chapter 321, Statutes of 2000. The purpose of these regulations is to implement, interpret, and make specific the provisions of Insurance Code Sections 1631 and 1635.

E. Informative Digest

The specific purpose of each emergency regulation and the rationale for the determination that each regulation is reasonably necessary to carry out the purpose for which it is proposed are set forth below.

Section 2193: Definitions

New Section 2193 sets forth two definitions for new Article 10, which will provide the activities exempt from licensure by the Commissioner as insurance producers – agents, brokers or solicitors – under Chapter 5, Part 2, Division 1 of the Insurance Code. “Licensee” is defined to mean those persons licensed by the Commissioner to act as insurance producers under Insurance Code Sections 1621 through 1624. Conversely, “unlicensed person” is defined to mean a person not so licensed.

These definitions are needed to make clear and simplify the language of the new license exemption regulations and to convey to persons subject to, implementing the regulations and reading the regulations, the meaning of the regulations.

Section 2193.1: Clerical Activities Exempt From Insurance Producer Licensing

Insurance Code Section 1635(l) states that licensure as insurance producers is not required for insurer or producer officers, directors or employees whose executive, administrative, managerial or clerical activities are indirectly related to soliciting, negotiating or effecting the sale of insurance. New Section 2193.1 provides those clerical activities indirectly related to the solicitation, negotiation or effecting sale of insurance exempt from licensure.

Under new Section 2193.1 clerical activities exempt from licensure include, but are not limited to: distribution of brochures, business cards, or other general information advertising insurers, insurance agencies, or insurance products, services or promotions; preparing insurance coverage applications; obtaining information from persons other than the insureds or applicants for coverage; and, preparation of insurance related documentation under the supervision of producer licensees and for the review and signature of licensees.

This regulation is needed to specify clerical activities that can be performed by insurer or producer personnel without the necessity for licensure, as provided in Insurance Code Sections 1631 and 1635. The activities provided in the regulation are clerical or ministerial in nature, and do not include analysis, giving advice or making recommendations as to insurance contracts or terms of contracts. These activities, due to their clerical or ministerial nature, are not considered to be soliciting, negotiating or effecting the sale of insurance, and, therefore should be exempt from licensure. This regulation is also needed to comply with the direction in Section 8 of AB 393 that the Commissioner adopt regulations to implement Insurance Code Section 1635.

Section 2193.2: Activities Involving Clerical Changes to Insurance Policies and Indirect Marketing and Servicing Support Exempt From Insurance Producer Licensing

Insurance Code Section 1635(m) states that licensure as insurance producers is not required for employees whose activities are limited to making clerical changes to existing insurance policies or providing indirect marketing and servicing support to determine general interest in insurance products.

Under new Section 2193.2 the activities exempt from insurance producer licensure involving making changes to existing insurance policies or providing indirect insurance marketing and servicing support include but are not limited to: dissemination of insurance buyers' guides, coverage applications, and other forms in response to consumer requests; receiving or recording information from customers; scheduling appointments with producer licensees; communicating with customers to obtain factual information requested by producer licensees; accepting insurance premiums to deliver to producer licensees; receiving and recording insureds' requests for additions or deletions to existing policies and preparing endorsement forms for the signatures of producer licensees; informing insureds, in response to their inquiries, as to existing policy information, including financial limits, premium balances due, and effective coverages; answering the telephone, receiving faxes and other general secretarial or administrative functions; and, foreign language translation between producer licensees and customers.

This regulation is needed to specify activities limited to making clerical changes to existing insurance policies or providing indirect marketing and servicing support to determine general interest in insurance products that can be performed by insurer or producer personnel without the necessity for licensure, as provided in Insurance Code Sections 1631 and 1635. The activities provided in the regulation are clerical or ministerial in nature, and do not include analysis, giving advice or making recommendations as to insurance contracts or terms of contracts. These activities, due to their clerical or ministerial nature, are not considered to be soliciting, negotiating or effecting the sale of insurance, and, therefore should be exempt from licensure. This regulation is also needed to comply with the direction in Section 8 of AB 393 that the Commissioner adopt regulations to implement Insurance Code Section 1635.

Section 2193.3: Activities Requiring Licensure as an Insurance Producer

Insurance Code Section 1631 provides that persons cannot solicit, negotiate or effect insurance contracts, or act in the capacities of insurance agents, life agents, insurance brokers or insurance solicitors, unless licensed by the Commissioner to act in such capacities.

New Section 2193.3 implements Insurance Code Sections 1631 and 1635 by stating those activities which are not exempt from licensure because they are directly related to the solicitation, negotiation or effecting the sale of insurance.

The activities for which insurance producer licenses required are: explaining or interpreting, and offering of opinions or recommendations on, insurance coverages, exposures, limits, premiums, rates, deductibles, payment plans, or other insurance contract terms; recommending, advising or

urging customers to purchase particular insurance policies or to insure with particular companies or insurers; and, binding insurance coverages.

This regulation is needed to specify activities requiring licensure as an insurance producer, as provided in Insurance Code Sections 1631 and 1635. The activities provided in the regulation include analysis, interpreting, describing, giving advice or making recommendations as to insurance contracts or terms of contracts. These activities are directly related to the soliciting, negotiating or effecting the sale of insurance. This regulation is also needed to comply with the direction in Section 8 of AB 393 that the Commissioner adopt regulations to implement Insurance Code Section 1635.

F. Specific Agency Statutory Requirements

In compliance with California Insurance Code Section 12921.7, on or about June 5, 2002 notice of proposed emergency action was mailed to every person, group, or association who has previously filed a request for notice for regulatory action with the Commissioner.

G. Local Mandate Determination

The Commissioner has determined that the regulatory action imposed herein will result in no program mandates on local agencies or school districts.

H. Form 399/Economic and Fiscal Impact Statement

Attached.

Contact Person:

Steven Suchil
Senior Staff Counsel
916-492-3500
916-324-1883 fax
suchils@insurance.ca.gov